

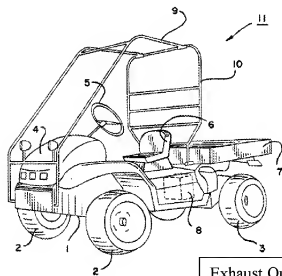
## REMARKS

Claims 1-43 remain pending in the present Application, none of the claims having been amended or canceled.

In response to the Office Action mailed September 10, 2007, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments.

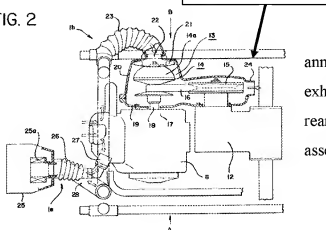
### Mizuta et al. Does Not Anticipate Claims 22-23 and 36-42

Claims 22-23 and 36-42 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,086,858 issued to Mizuta et al. Applicant respectfully traverses the present rejection.



As noted in the Office Action, Mizuta et al. teaches a small utility vehicle having an air intake system. As shown in Figure 1, annotated and reproduced adjacent hereto, the engine 8 is disposed lower than the seat 6. However, the illustration of the engine 8 shows that the engine 8 is or may be at about the same height as the wheels 2, 3.

FIG. 2



As shown in Figure 2 of Mizuta et al., annotated and reproduced adjacent hereto, the exhaust duct for cooling air 24 is mounted on a rear end of the cover of the belt converter assembly 13.

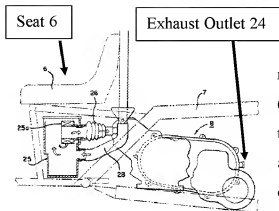


Figure 3 of Mizuta et al., annotated and reproduced adjacent hereto, shows the outlet duct 24 (although it is not identified in the original drawings of the Mizuta et al.). The orientation of the outlet duct 24 appears to be at about the middle to lower half of the engine 8 in Figure 3. Additionally, as is clear from Figure 3, the exhaust duct 24 is positioned well below the seat 6 and rearward from the seat 6. Finally, Applicants would like to point out that when the orientation of the exhaust outlet illustrated in Figure 3 is compared with the orientation of the engine 8 illustrated in Figure 1, it would appear that the exhaust outlet 24 is well below the tops of the wheels 2 and 3. However, in any event, the specification of the Mizuta et al. reference is **entirely silent** as to the vertical location of the exhaust outlet 24 and its position relative to the seat surface 6.

Applicants recognize that the Examiner has indicated that, in contrast, “the outlet opening is [sic] positioned to generally close to the elevation of the sitting surface” with respect to the outstanding rejection of Claim 22. Additionally, the Office Action indicates that, with regard to Claim 36, “the inlet and outlet openings positioned higher than the wheels.”

As noted above, Applicants respectfully note that the specification of the Mizuta et al. reference is entirely silent as to the relative position of the exhaust outlet 24 and the sitting surface of the seat 6 as well as the wheels 2 and 3, except for that which can be divined from Figures 1 and 3.

However, Applicants would like to point out that it has long been established that “**proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale.**” M.P.E.P. § 2125 (emphasis added). More particularly, Applicants would like to note that M.P.E.P. § 2125 indicates that “when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.” On the other hand, the M.P.E.P. also indicates that “the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art.” M.P.E.P. § 2125.

As noted above, Applicants submit that it is quite clear that the exhaust outlet 24 of the Mizuta et al. reference is illustrated as being *below* the tops of the wheels 2 and 3 and *well below and rearward* from the seating surface of the seat 6. Without an express indication of the relative position

of the exhaust outlet 24 being above the wheels 2 and 3 and/or close to the seating surface 6, Applicants believe that the Examiner is essentially relying on the inherent teachings of the Mizuta et al. reference.

However, Applicants would also like to point that it has long been established that “to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” M.P.E.P. § 2112, ¶ IV (emphasis added).

In the present case, as noted above, the specification of the Mizuta et al. reference is **entirely silent as to the relative position of the exhaust outlet 24 and the wheels 2 and 3**. However, as noted above, Applicants submit that one of ordinary skill in the art would be led to believe that the position of the exhaust outlet 24 is roughly significantly below the tops of the wheels 2 and 3 and similarly significantly below in rearward from the sealing surface of the seat 6.

In contrast, Claim 22 recites, among other recitations, “a transmission arranged to transmit the rotation of the crankshaft to at least one of the wheels, a housing configured to house at least a portion of the transmission, the housing having an air inlet duct through which ambient air enters the housing and flows across the portion of the transmission and an air outlet duct through which the air leaves the housing, the air inlet duct having an inlet opening, the air outlet duct having an outlet opening, and a seat defining a sitting surface on which a driver or passenger of the vehicle sits, the inlet opening being positioned at generally the same elevation as or higher than the sitting surface, the outlet opening being positioned generally close to the elevation of the sitting surface.”

Claim 36, on the other hand, recites, among other recitations, “a transmission arranged to transmit the rotation of the crankshaft to at least one of the wheels, and a housing configured to house at least a portion of the transmission, the housing having an air inlet duct through which ambient air enters the housing and an air outlet duct through which the air leaves the housing, the air inlet duct having an inlet opening, the outlet duct having an outlet opening, the inlet and outlet openings positioned higher than the wheels, and wherein at least a portion of the outlet duct is disposed under the seat.”

This distinction is important because, as noted in the present Specification, by positioning the outlet opening of the outlet duct above the top surface of the wheels 56, 58, water will not enter the belt housing 178 if the wheels are submerged during use. Additionally, other advantages are achieved by positioning the outlet at about and/or close to the surface of the seat. See ¶¶ [0098] and [0099] of the present specification.

Applicants thus submit that Claims 22 and 36 clearly and nonobviously define over the Mizuta et al. reference. Additionally, Applicants submit that Claims 23 and 37-42 also define over the Mizuta et al. reference, not only because they depend from one of Claims 22 or 36, but also on their own merit.

**The Proposed Combination Of Mizuta et al./Wagner et al. Does Not Make Claims 1, 2, 4, 7, 8, 10-16, 18-21, and 24-35 Obvious**

Claims 1, 2, 4, 7, 8, 10-16, 18-21, and 24-35 stand rejected under 35 U.S.C. § 103(a) as being obvious over Mizuta et al. in view of U.S. Patent No. 6,729,830 issued to Wagner et al. Applicant respectfully traverses the present rejection.

As noted above, Mizuta et al. fails to teach an air outlet of a transmission housing being positioned above the wheels of the associated vehicle. This failure is clearly apparent from the comparisons of Figures 1, 2, and 3. Additionally, as noted above, Applicants also submit it is improper for the examiner to conclude that the outlet 24 of the Mizuta et al. reference is disposed above the wheels or adjacent to or about the same height as a seating surface as the seat 6 based on the long established rules set forth in M.P.E.P. § 2112, ¶ IV and M.P.E.P. § 2125.

Wagner et al. does not rectify the failures of Mizuta et al. Rather, Wagner et al. was cited in the Office Action as providing a teaching of providing two seats with an engine disposed below two seats.

In contrast, Claim 1 recites, among other recitations, “a transmission arranged to transmit the rotation of the crankshaft to at least one of the wheels, and a housing configured to house at least a portion of the transmission, the housing having an air inlet duct through which ambient air enters the housing and flows across the portion of the transmission and an air outlet duct through which the air leaves the housing, the air inlet duct having an inlet opening, the outlet duct having an outlet opening, the inlet and outlet openings positioned higher than the wheels”.

Similarly, Claim 8 recites, among other recitations, “a transmission arranged to transmit the rotation of the crankshaft to at least one of the wheels, and a housing configured to house at least a portion of the transmission, the housing having an air inlet duct through which ambient air enters the housing and an air outlet duct through which the air leaves the housing, the air inlet duct having an inlet opening, the outlet duct having an outlet opening, the inlet and outlet openings positioned higher than the wheels, and at least two seat assemblies disposed side by side on the frame, and the outlet duct having a portion extending between the seat assemblies”.

Additionally, Claim 21 recites, among other recitations, “a transmission arranged to transmit the rotation of the crankshaft to at least one of the wheels, a housing configured to define a chamber around at least a portion of the transmission, and means for introducing ambient air into the chamber and discharging the air from the chamber and for inhibiting water from entering the chamber”.

With regard to Claim 21, Applicants would like to point out that Claim 21 is in the “means-plus-function format,” and should be interpreted under 35 U.S.C. § 112, 6 paragraph. As such, Applicants respectfully direct the Examiner to paragraph [0098] which indicates that both “the inlet opening 233 of the inlet duct 230 and the outlet opening 234 of the outlet duct 232 are positioned at elevations higher than the respective top surfaces 56a, 58a of the wheel 56, 58. Thus, even if the wheels 56, 58 are submerged during use, water will not enter the v-belt housing 178.”

Thus, Applicants submit that Claims 1, 8, and 21 clearly and nonobviously define over any obvious combination of the Mizuta et al. and Wagner et al. references. Additionally, Applicants submit that Claims 2, 4, 7, 10-16, 18-20, and 24-35 also define over these references, not only because they depend from one of Claims 1, 8, or 21, but also on their own merit.

### **CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

**Appl. No.** : 10/803,274  
**Filed** : March 18, 2004

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: February 6, 2008

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